IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1133 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BACHUBHAI JUGABHAI PRAJAPATI & 4 - Appellant(s)
Versus
DRIVER GOVINDBHAI GANPATBHAI SONI & 2 - Defendant(s)

==========

Appearance :

MR HD CHUDASAMA for Appellant(s) : 1 - 5.
MR SK BUKHARI for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2,
MR RAJNI H MEHTA for Defendant(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 10/10/2006

ORAL JUDGMENT

The appellants are the original claimants. They filed Motor Accident Claim Petition No. 8 of 1984 before the Motor Accident Calims

Tribunal No. 4 [Main] at Ahmedabad. Appellants no. 1, 2 and 3 are the brothers of the deceased, whereas appellants no. 4 and 5 are mother and sister respectively. The deceased was aged 22 years. On 21/7/1983 at about 7.30 p m he was returning from his job. He was proceeding towards his residence on bicycle. When he reached near the cross road junction near Vasna Bus Stop, the bus belonging to the Ahmedabad Municipal Transport Service [AMTS] approached the spot from Sarkhej side and had knocked down the deceased. As a result of the impact with the road, his head received very serious injuries and he almost instantaneously died. The appellants, therefore, filed the present proceedings to claim compensation of Rs.77,000/-. The deceased was unmarried. According to the appellants, theirs was a joint family and hence they were the dependents of the deceased.

1.1. The claim of the appellants was resisted by the respondents. Respondent no. 1 was the driver of the bus at the relevant time. Respondent no. 2 is the Ahmedabad Municipal Transport Service and since the vehicle was insured with respondent no. 3 – Oriental Fire & General Insurance Co. Ltd., is also joined as party. It was the contention of the respondents that the accident did not take place on account of rash and negligent act of respondent no. 1. According to them, it was the deceased who was negligent and as a result of that the accident occurred. Joint written statement has been filed by respondents no. 1 and 2, which is at Exh. 11. The Insurance Company i.e.,

respondent no. 3 has filed written statement at Exh. 20. They have also raised the averments on the same line.

1.2. At the hearing of the proceedings, the parties led oral as well as documentary evidence. The appellants examined Jinabhai Jugabhai – appellant no. 3 at Exh. 22. They have also examined Yusufbhai Mohmedbhai Sharif at Exh. 23. One eye witness, namely, Kalubhai Nanubhai was examined by them at Exh. 29. So far respondents are concerned, respondent no. 1 stepped into the witness box and gave evidence at Exh. 39.

1.3. On the basis of the material produced before it, the Tribunal came to the conclusion that the entire fault was that of the deceased and because of his negligence the accident occurred. The Tribunal, therefore, dismissed the claim. However, the Tribunal also assessed the compensation that could have been awarded to the dependents of the deceased had the issue of negligence been decided in their favour. According to the Tribunal, just and adequate compensation could have been Rs.41,920/-. This has been done keeping in view the principles of law relating to bachelor's death in a vehicular accident. The Tribunal found that except mother, no other appellant was not entitled to recover any compensation.

2. I have heard Mr. HD Chudasama, learned advocate for the

appellants. He has taken me through the evidence and other documents which are on record of the case. According to him, the finding given by the Tribunal is absolutely erroneous because the deceased was approaching the main road from the side of Jivraj Park and while he was about to enter the main road at the cross road junction, he was knocked down by the bus. He has referred to the evidence of the eye witness, namely Kalubhai Nanubhai and also the panchnama of scene of occurrence. He has also submitted that considering the fact that it had rained around that time and it was already dark, the driver of the bus, namely respondent no. 1 ought to have exercised extra care when he was approaching the cross road junction and was intending to go to the bus stand. He has, therefore, submitted that the finding on this issue be quashed and set aside. So far the assessment made by the Tribunal regarding just compensation is concerned, Mr. Chudasama had not seriously challenged it.

3. I have closely perused the relevant discussion in the judgment. It clearly appears from the evidence of Kalubhai Nanubhai that the deceased was returning home and for that purpose he was riding on his bicycle and coming from the side of Jivraj Park and to go towards Paldi where his residence is situated. This fact is not challenged in the evidence. The Tribunal appears to have been misguided by the fact that in the panchnama the cycle is shown to be almost on the incorrect side of the deceased. However, the evidence shows that because of the impact of the bus, the deceased as well as the cycle were

violently thrown to considerable distance. Therefore, there is every possibility that the cycle might have landed on the wrong side of the road on which the deceased was travelling. It also appears that the bus has received some damage on its right side. Therefore, there is every possibility that due to the impact with that portion of the bus, the cycle would be thrown towards the wrong side of the road so far the deceased is concerned. Respondent no. 1, to save his skin, would certainly try to throw the blame on the deceased and to shield himself against any difficulty, he would depose in a manner which would show that it was the deceased who was solely negligent. However, when the evidence of Kalubhai Nanubhai which is duly supported by the panchnama is available and when I find it reliable, I have to accept it. In view of this, the finding regarding negligence given by the Tribunal is totally erroneous and it is quashed and set aside.

3.1. So far the just compensation is concerned, the Tribunal has carried out that exercise and has arrived at a figure, namely Rs.41,920/-, which could be awarded to the widowed mother of the deceased. The Tribunal has given adequate reasons to arrive at a figure of Rs.41,920/-. The Tribunal has also concluded that when the mother of the deceased is alive, according to provisions of Hindu Law, the other appellants would not be entitled to receive the compensation. I am totally in agreement on that count with the Tribunal. I do not wish to disturb the figure arrived at by the Tribunal.

3.2. So far respondents no. 2 and 3 are concerned, they are the insured and the Insurance company. The accident occurred when respondent no. 1 was discharging his duties as driver on the AMTS Bus. Hence, respondent no. 2 is vicariously liable for tortuous act of respondent no. 1. Therefore, all the respondents are jointly and severally liable to pay compensation and they are directed to satisfy the award together with proportionate costs and interest at the rate of 6% p a from the date of application till realization. The result is that the appeal is allowed.

R & P to be retransmitted to the Tribunal forthwith.

[Akshay H Mehta, J.]

* Pansala.